



## Decision

**Matter of:** Custom Environmental Service, Inc.

**File:** B-255331.3

**Date:** July 13, 1994

Joel S. Rubinstein, Esq., Bell, Boyd & Lloyd, for the protester.  
Lydia Kupersmith, Esq., General Services Administration, for the agency.  
Jennifer D. Westfall-McGrail, Esq., Ralph O. White, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

Where it can be reasonably determined from the bid itself that the bidder mistakenly omitted negative signs from percentage factors quoted in its bid, agency properly permitted bidder to correct its bid price.

### DECISION

Custom Environmental Service, Inc. protests the award of a contract to Environmental Resources Group, Inc. (ERG) under invitation for bids (IFB) No. GS11P-93-MJD-0065, issued by the General Services Administration (GSA) for landscape maintenance services at the Suitland Federal Center in Suitland, Maryland. The protester contends that GSA improperly permitted ERG to correct its bid price, thereby displacing the protester as the low bidder.

We deny the protest.

The IFB, which sought services for a base and 4 option years, set forth the government's estimate of the cost of performing each of the required landscaping tasks and instructed bidders to quote a single price in the form of a percentage factor (plus, net, or minus) for each year. Bidders' prices were to be calculated by applying this percentage factor to the government estimate for each line item. For example, if a bidder entered "-20" for the base period, it was offering to perform each of the line items during the base period for 20 percent less than the government estimated price. The solicitation advised that

the low bidder would be determined by adding the percentages for each of the 5 years.

Six bids were received by the October 14, 1993, opening date. ERG's bid, which was the fifth bid opened, failed to specify whether the percentage factors quoted were positive or negative; the bid opening official therefore announced the amounts as positive. As the bid was being read, the president of ERG interrupted the bid opening official and stated that the percentage factors were intended to be negative rather than positive. Nonetheless, the bid opening official advised ERG's president that in the absence of a negative sign in front of the percentage factors, the factors would be read as positive numbers.

The bids received, stated as percentage factors, were as follows:

<u>Bidder</u>	<u>Base Year</u>	<u>Option 1</u>	<u>Option 2</u>	<u>Option 3</u>	<u>Option 4</u>
Custom Environ'l.	-28	-28	-28	-28	-28
Custom Lawn Svc.	-27.25	-27.25	-27.25	-27.25	-27.25
T-P Enterprises	-13.5	-13.5	-13.5	-13.5	-13.5
L.A. Horizon	-10	-10	-5	0	+5
ERG	+35	+33.5	+32	+30.5	+29
Maggie's Landscape	+170	+175	+180	+185	+190

After adding together the percentages for all 5 years, the contracting officer determined that Custom Environmental Service, with an aggregate price of \$2,278,429, was the low bidder. The aggregate prices of all the bidders, in dollar amounts, were as follows:

Custom Environmental	\$2,278,429
Custom Lawn Service	2,302,162
T-P Enterprises	2,737,279
L.A. Horizon	3,037,905
ERG	4,177,120
Maggie's Landscape	8,860,558

As shown, ERG, with a price of \$4,177,120 (based upon interpretation of its percentage factors as positive numbers), was the fifth low bidder.

Immediately following bid opening, ERG advised the agency that its bid contained a mistake and asked how to correct it. After agency contracting officials advised ERG to provide a written explanation of the mistake, ERG submitted letters dated October 15 and 20, offering the following evidence that it had mistakenly omitted negative signs from the percentage factors in its bid: (1) the bid contained decreasing percentages over the 5-year contract term, which, if the percentages were assumed to be positive, would mean that ERG's prices in the option years would progressively decrease rather than progressively increase; (2) the bid bond, which had a penal sum not to exceed \$100,000, would not satisfy the IFB requirement for a bid guarantee in an amount equal to 20 percent of the bid price for the base period; (3) the bid bond application submitted to ERG's bank to procure the bond estimated a base year price of \$500,000 for the contract, which would be greatly exceeded if its bid percentage factor for the base year was +35 percent; and (4) all of the other bidders except one bid negative percentage factors.

The contracting officer determined, based on this evidence and his knowledge of the bids received under previous procurements for similar services, that ERG had intended to bid negative percentage factors. He therefore permitted ERG to correct its bid price. As corrected, ERG's aggregate price was \$2,151,839--rather than \$4,177,120--and ERG displaced Custom Environmental as the lowest-priced responsive bidder. On March 2, GSA awarded a contract to ERG, and on March 4, Custom filed a protest with our Office.

#### DISCUSSION

Where a bidder requests permission to correct a mistake in its bid prior to award, and where clear and convincing evidence establishes both the existence of the mistake and the bid actually intended, the agency may permit the correction; however, if correction of the bid results in displacing one or more lower bids, the existence of the mistake and the bid actually intended must be ascertainable substantially from the IFB and the bid itself. Federal Acquisition Regulation (FAR) § 14.406-3(a); Electronic Space Sys. Corp., B-236006, Oct. 26, 1989, 89-2 CPD ¶ 381. Where,

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<sup>1</sup>The fourth and sixth low bidders, Maggie's Landscape and L.A. Horizon, were ultimately rejected as nonresponsive for failing to furnish bid bonds. Thus, ERG was the fourth low responsive bidder.

as here, it is clear that a mistake was made but there are two possible interpretations as to the bid intended, we have allowed correction and displacement of another bidder where, on the basis of logic and experience, it can be determined that only one of the two prices makes sense. Frontier Contracting Co., Inc., B-214260.2, July 11, 1984, 84-2 CPD ¶ 40.

Here, we think that the contracting officer correctly determined that the only reasonable interpretation of ERG's bid was that the percentage amounts were intended to be negative. First, ERG's prices in the option years would progressively decrease if the percentages were assumed to be positive, a bidding pattern which would not generally be expected and which was not followed by any of the other bidders. Second, ERG's bid bond, which was required to represent 20 percent of its bid price for the initial 1-year period, would be inadequate if the percentages were interpreted as positive.<sup>2</sup> Finally, all of the other bidders--with the exception of one, whose prices were grossly out of line with the other bidders' prices--bid negative percentage amounts.

Based on this evidence, we think that the agency reasonably permitted ERG to correct its bid.

The protest is denied.

/s/ Robert H. Hunter  
for Robert P. Murphy  
Acting General Counsel

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<sup>2</sup>ERG's price for the base period, calculated by applying a factor of +35 percent to the agency estimate of \$632,897, would be \$854,411. Since 20 percent of \$854,411 is \$170,882, a bond with a penal sum not exceeding \$100,000 would be insufficient to cover ERG's bid.